No. 87-1031

IN THE
Supreme Court of the United States
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G. P. REED,
Petitioner,

v.

UNITED TRANSPORTATION UNION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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This brief *amicus curiae* of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), a federation of 90 national and international labor organizations with a total membership of approximately 13,000,000 working men and women, is filed with the consent of the parties, as provided for in the Rules of the Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question in this case is whether civil actions brought under Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) should be subject to the statute of limitations governing duty of fair representation suits and unfair labor practices as set forth in § 10(b) of the National Labor Relations Act (NLRA), or, instead, to the various state statutes of limitations governing personal injury actions. Under this Court's decisions, the answer to that question turns on whether federal law or state law provides a closer analogy to LMRDA Title I actions, and on whether federal law or state law would better effectuate federal policy. Pp. 3-5 *supra.*

That Title I bears a strong "family resemblance" with both the union unfair labor practice provisions of the NLRA and with the duty of fair representation is undeniably. All of these rest on the same premise: Congress, having recognized and regulated the right of unions under the NLRA and the Railway Labor Act (RLA) to act as exclusive representatives, determined that it was necessary to assure that in various contexts unions use that authority to benefit the represented employees. That premise is clear from the structure and legislative history of the LMRDA as well as the decisions of this Court discussing that Act; indeed the legislative materials show that in enacting the LMRDA Congress acted for the purpose of remedying abuses "which distort and defeat the policies of the Labor Management Relations Act . . . and the Railway Labor Act," and Congress viewed "the conduct prohibited" to be "generally comparable to conduct described as an unfair labor practice." And because the LMRDA's form and its *raison d'etre* derive from the system of exclusive representation which is a unique, integral part of the national labor policy, that Act has no analog in ordinary state law. Pp. 8-17 *infra*.

This Court's decisions, as well as the decisions of the lower courts and of the National Labor Relations Board (NLRB), likewise make plain that there is a "substantial overlap" of coverage between LMRDA Title I on the one hand, and the NLRA unfair labor practice provisions and the duty of fair representation on the other. This overlap is clearest in those cases involving union conduct that affects a union member's employment rights, as for example, when a union is alleged to have retaliated against a dissident member in the operation of a hiring hall or in the processing of a grievance, or when a union is alleged to have sought to blacklist or procure the discharge of a dissident member. Such an allegation states a claim for relief under Title I, the duty of fair representation, and NLRA §§ 8(b)(1)(a) & (b)(2).

Even absent any employer involvement or any effect on employment, internal union discipline of a member can be said to "restrain or coerce" within the meaning of NLRA § 8(b)(1)(A) and thus can violate that provision if the discipline is motivated by the member's exercise of a § 7 right. And because § 7 protects much activity that is also privileged by LMRDA Title I, at least in theory virtually all Title I claims alleging discipline based on "dissident" activities can be brought as a § 8(b)(1)(A) charge as well. Indeed, the NLRB has held that a union violates that section by disciplining a union member for *e.g.*, the member's political activity within the union, for calling an ad hoc membership meeting to debate union policies, or publishing a newsletter critical of the union leadership. Pp. 17-22 *infra*.

In light of the foregoing, it follows that borrowing the § 10(b) limitations period for LMRDA claims will best effectuate federal policy. To do otherwise would mean that many, possibly most, Title I plaintiffs could prosecute stale NLRA § 8(b) or fair-representation claims under Title I, and thereby undermine the established policies favoring repose as to these other actions. Moreover, given that Congress passed the LMRDA to perfect the federal scheme of collective bargaining, there is every reason to believe that the Title I limitations period should faithfully reflect the policy favoring the relatively rapid disposition of labor disputes. Indeed, rapidity and repose are especially important in the LMRDA context because Title I suits can put in issue the identity of the union officers, the policies of the union, and the validity of the union's labor contracts. Allowing stale claims to linger could undermine the union's ability to represent its members in bargaining and ultimately the collective-bargaining system itself. And since, as this Court has concluded, the NLRA § 10(b) period is sufficient to provide a plaintiff with a fair opportunity to litigate his claim, that statute of limitations should be borrowed for LMRDA Title I actions. Pp. 22-29 *infra*.

ARGUMENT

Title I of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. §§ 411-15 guarantees all members of labor organizations that are acting (or seeking to act as) as bargaining representatives in industries covered by either the National Labor Relations Act ("NLRA") or the Railway Labor Act ("RLA") various rights to participate in the deliberations and governance of those organizations. These provisions are, in the main, enforced through private civil actions brought by members against their labor organization. *See* 29 U.S.C. §§ 412 & 529.

As is often the case with federal statutes, LMRDA Title I does not provide an express statute of limitations for private civil actions instituted thereunder. This case presents the issue of whether, to fill that void, Title I civil actions should be subject to the six-month limitations period of § 10(b) of the NLRA, 29 U.S.C. § 160(b)—which was held in *DelCostello v. Teamsters*, 462 U.S. 151 (1983), to govern employees' duty of fair representation suits against unions—or instead, to the various state statutes of limitations governing personal injury actions.[1]

1. *Federal "Borrowing" Doctrine.* The legal framework for deciding such a choice of statute of limitations issue is clear. Where Congress has established a cause of action without specifically establishing a statute of limita-

[1] Five courts of appeals, including the court below, have determined that § 10(b) should govern Title I actions. *See Reed v. UTU*, 828 F.2d 1066 (4th Cir. 1987); *Clift v. UAW*, 818 F.2d 623 (7th Cir. 1987), petition for cert. pending, No. 87-42; *Davis v. UAW*, 765 F.2d 1510 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *Adkins v. International Union of Elec. Workers*, 769 F.2d 330 (6th Cir. 1985); *Local 1397 v. United Steelworkers*, 748 F.2d 180 (3d Cir. 1984). One court of appeals has rejected the use of § 10(b). *Rodonick v. House Wreckers*, 817 F.2d 967 (2d Cir. 1987). And, one court of appeals has drawn a distinction between LMRDA claims related to duty of fair representation claims, *Linder v. Berge*, 739 F.2d 686 (1st Cir. 1984) (applying § 10(b)) and "freestanding" LMRDA claims, *Doty v. Sewall*, 784 F.2d 1 (1st Cir. 1986).

tions the "task is to 'borrow' the most suitable statute or other rule of timeliness from some other source." *Agency Holding Corp. v. Malley-Duff & Associates*, 55 L.W. 4952, 4953 (1987), quoting *DelCostello, supra*, 462 U.S. at 158. In so doing, the Court's "fallback rule of thumb" is to look to state law; the court does so "on the assumption that, absent some sound reason to do otherwise, Congress would likely intend that the courts follow their previous practice of borrowing state provisions." 462 U.S. at 158 n. 12.

"But the Court has not mechanically applied a state statute of limitations simply because a limitations period is absent from the federal statute." *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977). As the Court concluded in *Occidental Life*, "[s]tate limitations periods will not be borrowed if their application would be inconsistent with the underlying policies of the federal statute." 432 U.S. at 367. In *DelCostello*, the Court following this principle, borrowed § 10(b), the NLRA limitations period on unfair labor practice charges, as the proper limitation in an employee's suit against his or her union for breach of the duty of fair representation as implied from the scheme of the NLRA.

The Court based this conclusion on the answers to two interrelated inquiries: *first*, does a federal limitations rule or a state rule correspond to a more closely analogous cause of action; and *second*, which limitations rule is more appropriate in terms of fairly effectuating federal policy.[2] Because the Court deemed that a duty of

[2] *See, e.g.*, 462 U.S. at 172:

> [W]hen a rule from elsewhere in federal law clearly provides a closer analogy than the available state statute and when the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking, we have not hesitated to turn away from state law.

See also Agency Holding Corp., supra (applying *DelCostello* formulation to determine that federal rule should govern civil RICO actions).

fair representation suit is in terms of policy and coverage closely analogous to a union unfair labor practice charge and has "no close analogy in ordinary state law," 462 U.S. at 165, and because the Court deemed use of § 10(b) more appropriate in policy and practical terms, the Court borrowed the federal rule.

All courts that have "borrowed" § 10(b) for use in Title I suits have done so on the authority of *DelCostello*.[8]

[8] Another issue under the borrowing doctrine "is whether all claims arising out of the federal statute 'should be characterized in the same way, or whether they should be evaluated differently depending upon the varying factual circumstances and legal theories presented in each individual case.'" *Agency Holding Corp., supra*, 55 L.W. at 4953, quoting *Wilson v. Garcia*, 471 U.S. 261, 268 (1985). Where one statute "encompass[es] numerous and diverse topics and subtopics," *Wilson, supra*, 471 U.S. at 273, such that there will often be doubt as to the characterization of a given case, a uniform characterization should be applied "to avoid intolerable 'uncertainty and time consuming litigation.'" *Agency Holding Corp., supra*, 55 L.W. at 4953, quoting *Wilson, supra*, 471 U.S. at 272.

No participant in this case has argued that Title I claims should be analyzed on a case-by-case basis. Both Petitioner and the United States argue that a uniform rule is appropriate. Brief for the Petitioner ("Pet. Br.") at 53; Brief for the United States ("U.S. Br.") at 12-13. The Association for Union Democracy and Public Citizen (collectively "AUD") take no position on this issue. AUD Br. at 23-26.

We strongly believe that a uniform rule is appropriate. This Court has previously noted that "Title I litigation [involves] 'facts and circumstances admitting of almost infinite variety.'" *Hall v. Cole*, 412 U.S. 1, 11 (1973), quoting *Gartner v. Soloner*, 384 F.2d 348, 353 (3d Cir. 1967). The confusion and uncertainty that case-by-case characterization would generate is amply demonstrated by the confusion and uncertainty that did exist in the lower federal courts prior to *DelCostello*. *See, e.g., Capitas v. Retail Clerks*, 618 F.2d 1370 (9th Cir. 1980) (California three-year statute governing actions over "liability created by statute"); *Howard v. Aluminum Workers*, 589 F.2d 771 (4th Cir. 1978) (Virginia two-year tort statute); *Dantagnan v. I.L.A., Local 1418*, 496 F.2d 400 (5th Cir. 1974) (Louisiana ten-year contract statute); *Sewell v. Machinists*, 445 F.2d 545 (5th Cir. 1971) (Alabama one-year tort statute); *Hiura v. Electrical Workers, Local 1186*, 527 F. Supp. 1340 (D. Hawaii 1980) (six-year debt statute); *Mitchell v. Local 346, International Brotherhood of Electrical Workers*, 100 LRRM 2953 (W.D. Wash. 1979) (either two-year statute for "actions for relief not otherwise provided for" or three-year tort statute); *Fehd v. Keebler Co.*, 98 LRRM 2329 (N.D. Ga. 1978) (two-year statute governing actions seeking backpay).

2. *The Close Relationship of LMRDA Title I to the NLRA, the RLA and to the Federal Labor Policy Generally.* The first step in determining the proper statute of limitations here is to compare the plaintiff's underlying cause of action and the policies that cause of action embodies, with those of the state and federal actions offered as analogs.

In pursuing this inquiry, the *DelCostello* Court determined that while the duty of fair representation, which is implied from the NLRA/RLA scheme of exclusive collective-bargaining representation, 462 U.S. at 164 n.14, has "no close analogy in ordinary state law," 462 U.S. at 165, that duty does share a "family resemblance [that] is undeniable, and indeed . . . a substantial overlap" of coverage with the NLRA's union unfair labor practice provisions governed by § 10(b), 462 U.S. at 170. The Court noted that "duty of fair representation claims are allegations of unfair, arbitrary and discriminatory treatment of workers by unions—as are virtually all unfair labor practice charges made by workers against unions." *Id., see* 29 U.S.C. § 158(b)(1)(A) and (2).

By the same token, the policies behind the LMRDA are intimately related to the same federal labor policy expressed in the NRLA and the RLA and Title I plays a role in that policy that, although not identical, is closely analogous to the duty of fair representation and the NLRA union unfair labor practice provisions referred to in *DelCostello*. All of these rest on the same premise: Congress, having recognized and regulated the right of unions under the NLRA and RLA to act as exclusive representatives, determined that it was necessary to assure in various contexts that unions use that right to benefit the represented employees.

It is for this reasons of *labor* policy that Congress has acted to regulate the internal structure of private-sector labor unions, while leaving the internal structure of most other private voluntary associations largely unregulated. The system of regulation thus has no analog in ordinary state law since its form and its *raison d'etre* derives from the system of exclusive representation, which is a unique integral part of the collective bargaining policy of our national labor relations scheme.

a. Taken together, the NLRA and the RLA establish as federal policy a system of industrial democracy through collective bargaining. First, employees are guaranteed the right to self-organization, to form, join, or assist labor organizations, . . . and to engage in other concerted activities for . . . the purpose of collective bargaining." 29 U.S.C. § 157. Once so empowered, those employees can, through majority action, designate labor organizations to bargain with their employers:

> National labor policy has been built on the premise that by . . . acting through a labor organization freely chosen by the majority, the employees of the appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions." [*NLRB v. Allis-Chalmers*, 388 U.S. 175, 180, (1967).]

A labor organization so designated gains a legally conferred power of exclusive representation. Although the system is correctly premised on the belief that exercise of that power immeasurably enhances the bargaining position of the employees as a group, exclusive representation also significantly and necessarily alters the legal rights of each individual in the group:

> The policy extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interest of all employees. "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents. . . ." *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 202. Thus only the union may contract the employee's terms and conditions of employment. . . . The employee may disagree with many of the union decisions but is bound by them. The majority-rule concept is today unquestionably at the center of our federal labor policy. [*Allis-Chalmers, supra*, 388 U.S. at 180.]

It is the establishment of majority rule and its effect on individual rights that creates the tension that—over the years—has repeatedly led to certain refinements in this scheme. The duty of fair representation, the provisions of NLRA §§ 8(b)(1)(A) and (2), and the LMRDA, must all be understood in these terms: each is premised on the notion that exclusive representation will only serve its humane goal of enhancing employee welfare, industrial democracy, and stability if the bargaining representative is constrained to act for the benefit of those for whom the representative is authorized to bargain. A more complicated system of balanced interests thus emerges, with the bargaining representative granted significant powers and legal protections, but made subject to certain public policy limits. Together, these grants and limitations take into account the employee group's need for effective power and the dangers of that power's abuse.

The first comprehensive articulation of this system of balances may be found in *Steele v. Louisville & N.R. Co.*, 323 U.S. 192 (1944) where this Court first inferred from the exclusive representation power, a corresponding duty of fair representation. Although an exclusive representative's status is the result of majority choice, once chosen,

> [t]he organization . . . [must] represent all its members, the majority as well as the minority, and it is to act for and not against those whom it repre-

> sents. It is a principle of general application that the exercise of a granted power to act in behalf of others involves the assumption toward them of a duty to exercise the power in their interest and behalf. [*Id.* at 202.]

It should be noted, however, that in defining the duty's scope, the Court has always recognized that the duty must be limited by the nature of the exclusive representative's legitimate needs as a representative. Thus, for example: "The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents." *Ford v. Huffman*, 345 U.S. 330, 338 (1953).

The adoption in 1947 of union unfair labor practice provisions that limit a union's ability to use its powers to "restrain or coerce" individual employees follows much the same rationale. As *DelCostello* noted, like the duty of fair representation, these provisions were designed to prevent "unfair, arbitrary or discriminatory treatment of workers." 462 U.S. at 170. Like the duty, these provisions were, moreover, intended to operate within Congress' continued commitment to the system of exclusive representation. Thus, although § 8(b)(1)(A) declared that unions could not "restain or coerce . . . employees in the exercise of [protected] rights", its proviso reserved to unions the power to "prescribe [their] own rules with respect to the acquisition or retention of membership therein." 29 U.S.C. § 158(b)(1)(A). The proviso reflected that

> Integral to . . . federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. * * * Congress [did not] limit[] unions in the powers necessary to the discharge of their role as exclusive statutory bargaining

> agents. . . . [*Allis-Chalmers, supra*, 388 U.S. at 181-183.]

The understanding that LMRDA Title I is part of the same tradition—*viz.* the tradition of balancing the need for constraints on the power of the exclusive representative to protect against abuses, while protecting that power's continued effective use for legitimate ends— is well accepted. For example, Archibald Cox—who, as a principle advisor to the Senate Labor Committee, drafted much of the LMRDA—explained in his leading article on the Act how its origin's are clearly found in the exclusive representation power:

> In retrospect it seems plain that the enactment of the LMRDA became inevitable when Congress, by enacting the Wagner Act, not only granted employees the right to bargain collectively but also transported the political principle of majority rule into labor-management relations by giving the union designated by the majority the exclusive right to represent all the employees in an appropriate unit. . . . The government which confers this power upon labor organizations has a duty to insure that the power is not abused. [Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 819-20 (1960).]

The most telling evidence that Congress rested the LMRDA on this pre-existing national labor policy is in the text of the statute itself. For example, the statute begins with a "Congressional Declaration of Findings, Purposes, and Policy," 29 U.S.C. § 401, which declares both a continued congressional commitment to the policies of collective bargaining representation set out in the NLRA and RLA, § 401(a), and a determination that the LMRDA would correct certain abuses "which distort and defeat the policies of the Labor Management Relations Act . . . and the Railway Labor Act." 29 U.S.C. § 401(c).

The LMRDA's scope of coverage reinforces the connection to pre-existing labor policy. The Act only regulates

labor organizations governed by the NLRA or RLA, 29 U.S.C. §§ 401(i) and (j), and Senator Goldwater, who sponsored the amendment that specifically excluded public-employee unions from coverage—and thus limited coverage to NLRA and RLA unions—made clear that this decision in large part rested on the nature of the federal labor law's exclusive-representation principle:

> Inasmuch as these [public employee] unions, in most instances, do not have the right . . . to compel their governmental employers to bargain with them, . . . I believe they should be free from the regulations imposed by the new bill. [105 Cong. Rec. A8510 (1950), reprinted in II NLRB, Legislative History of the LMRDA ("Leg. Hist.") 1844.]

Not surprisingly, references to the LMRDA's roots in the exclusive-representation system are plentiful throughout the legislative history. Indeed, Title I itself was explicitly put in such terms by its sponsor, Senator McClellan, at the time he introduced it:

> Sometimes the question is asked, "Why should we enact legislation protecting such rights for union members and not for members of any other organization? . . . It is through unionization and bargaining collectively that [the individual worker] is able to make himself heard at the bargaining table. It seems clear, therefore, that this . . . becomes meaningless when the individual worker is just as helpless within his union as he was within his industry.
>
> * * *
>
> I deem it appropriate that we insure by law internal democracy in unions and provide for proper protection of union members and their rights, because unions themselves exist and operate under powers and protection conferred by the Federal Government in a unique manner and to an unequal degree. Once a union has been certified by the National Labor Relations Board, for example, the employer is compelled to bargain with that union as the exclusive representative of all the workers within the bargaining union, irrespective of whether they are members of the union or not. If unions are to have such federally-bestowed, tremendous powers in industrial government, they should be compelled by law to represent their members in accordance with democratic principles. . . . [105 Cong. Rec. 5806 (1959), reprinted at II Leg. Hist. 1098.]

Similarly, the Senate Report introducing the bill that emerged as the LMRDA declared:

> Under the National Labor Relations Act and the Railway Labor Act, a labor organization has vast responsibility for economic welfare of the individual members whom it represents. Union members have a vital interest, therefore, in the policies and conduct of union affairs.
>
> * * *
>
> Under the National Labor Relations and Railway Labor Acts the union which is the bargaining representative has power, in conjunction with the employer, to fix a man's wages, hours, and conditions of employment. The individual employee may not lawfully negotiate with his employer. He is bound by the union contract. In practice, the union also has a significant role in enforcing the grievance procedure where a man's contract rights are enforced. The Government which gives unions this power has an obligation to insure that the officials who wield it are responsive to the desires of the men and women whom they represent. [S.Rep. No. 187, 86th Cong. 1st Sess. (1959), pp. 6-7, 20 ("S.Rep."), reprinted in I Leg. Hist. 402-403, 416.]

This Senate Report was written before Title I was added to the bill, but the analogous House Report containing Title I included almost identical language. *See* H. Rep. No. 741, 86th Cong., 1st Sess. (1959), pp. 7-8, 15-16 ("H. Rep."), reprinted in I Leg. Hist. 765-766, 773-774. *See also* S. Rep. at 8, 14, reprinted in I Leg. Hist. at 404, 410; H. Rep. at 11, reprinted in I Leg. Hist. at 769.

The legislative materials go beyond showing a connection between national labor policy and the perceived need for LMRDA. Specifically, Congress saw itself as offering remedies for conduct viewed as analogous to the unfair labor practices of the NLRA. Indeed, this was the precise analogy drawn in one of the most authoritative of legislative documents, the "Analysis of the Landrum-Griffin Reform Bill," authored by Representatives Landrum and Griffin, and offered to explain the nature of their bill. Among their changes to the prior bill was one regarding the prohibition on union disciplining of members for exercising LMRDA rights. In the version of the 1959 labor bill passed by the Senate this was a criminal prohibition. Representatives Landrum and Griffin explained that their amendment made this a civil prohibition because union discipline of members for asserting LMRDA rights *is "comparable" to an unfair labor practice*:

> In our judgment, the conduct prohibited by this section is generally comparable to conduct described as an unfair labor practice under the Taft-Hartley Act, and accordingly, we do not believe that criminal sanctions are warranted. [105 Cong. Rec. 13091 (1959), reprinted in II Leg. Hist. 1522.]

See also 105 Cong. Rec. 14194 (1959), reprinted in II Leg. Hist. 1567 (Rep. Griffin) (retaliatory discipline is "roughly comparable to . . . unfair labor practice under National Labor Relations Act").

This civil enforcement provision mirrored the language of Title I, and eventually became § 609 of the LMRDA, 29 U.S.C. § 529, one of the principal authorizations for Title I suits.

We would add that it is only to be expected that the authors of the LMRDA viewed the conduct they were proscribing to be comparable to unfair labor practices. Not only had the legislative debate focused on how such

conduct was "distort[ing] and defeat[ing] the policies" of the NLRA and RLA, 29 U.S.C. § 401(c), but the Board and courts were already interpreting the NLRA as applying to many of the matters at issue. For example, the NLRB and the courts had already established that it was protected concerted activity under the NLRA, 29 U.S.C. 157, for an employee to try to influence his union's policies, criticize his union's leadership, and generally debate the goals of his bargaining representative with other members. *See Nu-Car Carriers, Inc.*, 88 NLRB 75, 76 (1950), enforced, 189 F.2d 756 (3d Cir.), cert. denied, 342 U.S. 919 (1951). And this Court had held that it is an unfair labor practice for unions to enforce union members' internal membership obligations by affecting their job rights. *Radio Officers v. Labor Board*, 347 U.S. 17 (1954).

LMRDA Title I is also in the tradition of prior labor policy in another respect. Like the duty of fair representation and NLRA § 8(b)(1), Title I's provisions are limited by the legitimate needs of the bargaining representative. The guarantee of equal participation rights is subject "to reasonable rules and regulations in such organization's constitution and bylaws," 29 U.S.C. § 411(a)(1); the guarantee of members' freedom of speech and assembly is subject to "the right of the labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with [the organization's] performance of its legal or contractual obligations," § 411(a)(2); and the right to sue is subject to a possible 4-month exhaustion of internal union appeals procedures, § 411(a)(4). Even where specific procedural requirements are placed on unions—*viz.*, in the sections on dues increases and on the disciplinary process, §§ 411(a)(3) and (5)—only the basic procedures are set out and substantial leeway is left to the unions. This Court has appropriately noted that

under Title I, union rules "need not pass the stringent tests applied" in the constitutional area "so long as they are reasonable." *Steelworkers v. Sadlowski*, 457 U.S. 102, 111 (1982).[4]

The "family resemblance" of LMRDA, § 8(b)(1)(A), and the duty of fair representation that we have described herein—*viz.*, their related roles within the overall national labor policy—has been repeatedly recognized in the opinions of this Court. For example, *Allis-Chalmers*, *supra*, explicitly states that Congress passed the LMRDA "for the same reasons" that motivated the Court in crafting the duty of fair representation, *viz.*, to avoid abuses of the exclusive representation system:

> It was because the national labor policy vested unions with power to order the relations of employees with their employer that this Court found it necessary to fashion the duty of fair representation. That duty "has stood as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor

[4] The proposition that union autonomy is an important policy goal that generally limits the scope of LMRDA rights appears throughout the statute. This Court recognized this in *Sadlowski*, *supra*:

> Congress regarded the union's desire to maintain control over its own affairs as legitimate . . . . In drafting Title II through VI, Congress was guided by the general principle that unions should be left free to "operate their own affairs, as far as possible." S. Rep. No. 1684, 85th Cong. 2d Sess. 4-5 (1958). It believed that only essential standards should be imposed by legislation, and that in establishing those standards, great care should be taken not to undermine union self-government . . . . Thus, for example, in Title IV, which regulates the conduct of union elections, Congress simply set forth minimum standards. So long as unions conform to these standards, they are free "to run their own elections. *Wirtz v. Glass Bottle Blowers*, 389 U.S. [463, 471 (1968)]." [457 U.S. at 117]

In *Sadlowski*, the Court treated these provisions from elsewhere in the LMRDA as instructive for interpreting Title I.

> law." *Vaca v. Sipes*, 386 U.S. 171, 182. For the same reasons Congress in the 1959 Landrum-Griffin amendments, 73 Stat. 519, enacted a code of fairness to assure democratic conduct of union affairs by provisions guaranteeing free speech and assembly, equal rights to vote in elections, to attend meetings, and to participate in the deliberations and voting upon the business conducted at the meetings. [388 U.S. at 181].

Similarly, in *Emporium Capwell v. Community Org.*, 420 U.S. 50, 64-65 (1975) the Court described a "background of long and consistent adherence to the principle of exclusive representation tempered by safeguards for the protection of minority interests." The "temper[ing] safeguards" that the Court listed included the LMRDA, the duty of fair representation, and § 8(b)(1)(A):

> In vesting the representatives of the majority with this broad power [of exclusive representation,] Congress did not, of course, authorize a tyranny of the majority over minority interests. . . . [I]t undertook in the 1959 Landrum-Griffin amendments to assure that minority voices are heard as they are in the functioning of a democratic institution. . . . [W]e have held, [that] by the very nature of the [power of exclusive representation,] Congress implicitly imposed upon [the union] a duty fairly and in good faith to represent the interests of minorities within that unit. . . . And the Board has taken the position that a union's refusal [to represent minorities] is an unfair labor practice. [420 U.S. at 64-65].

See generally A. Cox, D. Bok, & R. Gorman, *Labor Law* (9th ed. 1981), pp. 379-380; R. Gorman, *Basic Text on Labor Law* (1976), pp. 379-381.

b. The foregoing demonstrates that in terms of the policies motivating, and served by, LMRDA Title I, there is here, as in *DelCostello*, a strong "family resemblance" between Title I claims, on the one hand, and both unfair

labor practice and duty of fair representation claims, on the other. Moreover, as in *DelCostello*, there is also a "substantial overlap" of coverage.

The "overlap" is undeniably clearest in those cases involving union conduct that affects a union member's employment rights. The legislative history of Title I makes plain that one of the principal reasons that Title was enacted was to protect dissident members from economic reprisals by unions. *See, e.g.*, 105 Cong. Rec. 5811 (1959), II Leg. Hist. 1103 (Sen. McClellan), 105 Cong. Rec. 14337 (1959), II Leg. Hist. 1613 (Rep. Loser); *see also Finnegan v. Leu*, 456 U.S. 431, 435-436 (1984) (noting congressional concern that union disciplinary actions "could mean . . . loss of livelihood"); *Boilermakers v. Hardeman*, 401 U.S. 233, 250-251 (1971) (Douglas J. dissenting) (same).

Thus, an allegation that a union has retaliated against a dissident member in the operation of a union hiring hall or in the processing of grievances, or an allegation that a union has sought to blacklist or procure the discharge of a dissident member, clearly states a claim for relief under Title I. Indeed, a large volume of Title I litigation involves claims of these types for lost wages and benefits. *See* M. Malin, *Individual Rights Within the Union* 124-26 (1988) (describing cases); Annot., *Union Member's Remedies Against Union in Suit under 29 U.S.C. § 412*, 40 A.L.R. Fed. 263, 293-94 (1978) (same).

With few if any exceptions, these same claims could be filed as claims for breach of the duty of fair representation. As we have seen, it is the precise office of that duty to prohibit a union from exercising its responsibilities as exclusive representative in an invidiously discriminatory manner. Penalizing dissidents for their views and activities constitutes a core violation of that duty. Thus, this Court observed in *DelCostello*: "[*m*]*any fair representation claims . . . include allegations of discrimination based on . . . dissident views.*" 462 U.S. at 170 (emphasis added). And large numbers of suits alleging retaliatory grievance handling, hiring hall manipulation, manipulation of contract ratification procedures, and the like are filed as *both* fair-representation and LMRDA Title I claims.[5]

Of equal importance, such claims of economic retaliation could be filed as unfair labor practice charges. As previously noted, under NLRA § 8(b)(1)(A) it is an unfair labor practice for a union to restrain or coerce, or, under NLRA § 8(b)(2), to cause or attempt to cause, an employer to discriminate against an employee based on that employee's exercise of rights protected by NLRA § 7. Section 7, in turn, protects much activity that is also privileged by LMRDA Title I including the right of employees to "[h]old[] union office," *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 703 (1983), and the right of employees to "question the wisdom of their representatives" or to seek "to align their union with their position." *Nu-Car Carriers, Inc., supra*, 88 NLRB at 76. Thus, an allegation that a union sought to penalize a dissident by affecting that individual's employment rights indisputably states a violation of NLRA § 8(b)(1)(A) or (b)(2) as well as a fair-representation claim and a Title I claim. *See, e.g., Quinn v. DiGuilian*, 739 F.2d 637 (D.C. Cir. 1984) (LMRDA and duty of fair representation suits filed after successful prosecution of unfair labor practice charge).

The extent of the relevant overlap of coverage, moreover, is far greater than this class of cases. Petitioner and his

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[5] *See, e.g., Murphy v. Operating Engineers*, 774 F.2d 114 (6th Cir. 1985); *Adkins v. Electrical Workers*, 769 F.2d 330 (6th Cir. 1985); *Vallone v. Teamsters*, 755 F.2d 520 (7th Cir. 1984); *Quinn v. DiGuilian*, 739 F.2d 637 (D.C. Cir. 1984); *Aquirre v. Automotive Teamsters*, 633 F.2d 168 (9th Cir. 1980); *American Postal Workers Union Local 6885 v. American Postal Workers Union*, 665 F.2d 1096 (D.C. Cir. 1981); *Alvey v. General Elec. Co.*, 622 F.2d 1279 (7th Cir. 1980); *Trail v. Teamsters*, 542 F.2d 961 (6th Cir. 1976).

supporting *amici curiae* claim that "the *only* cases which are covered by Title I and are also considered unfair labor practices under the NLRA are those in which the union causes a member to be discharged or otherwise injured by the employer." Pet. Br. at 29 (emphasis added); *see also* U.S. Br. at 15; AUD Br. at 20.[6] That contention could not be more wrong. *See Pattern Makers v. NLRB*, 473 U.S. 95, 109 n.20 (1985) (explicitly rejecting same contention). For in *NLRB v. Marine Workers*, 391 U.S. 418 (1968), this Court held that even absent any employer involvement or any effect on employment, *internal union discipline* of a union member, can in and of itself constitute "restrain[t] or coerc[ion]" within the meaning of NLRA § 8(b)(1)(A), and thus can violate that provision if the discipline is motivated by the member's exercise of a § 7 right. And in *Scofield v. NLRB*, 394 U.S. 423, 429 (1969), this Court reaffirmed *Marine Workers* and held that a union rule which "invades or frustrates an overriding policy of the labor laws . . . may not be enforced, even by fine or expulsion, without violating § 8(b)(1)."

As Professor Gorman has observed, *Marine Workers* and *Scofield* have "led the Board and courts . . . dramatically, [to] depart[] from the literal text of section 8(b)(1)(A) and . . . create[] what might be called a 'common law' of union discipline," R. Gorman, *Basic Text on Labor Law* 677-78 (1976). Under this doctrine, the Labor Board has held that a union violates § 8(b)(1)(A) by disciplining a union member for *e.g.*, the member's political activity within the union, *Carpenters Local No. 22*,

[6] Petitioner then discounts the importance of this class of cases with the unsupported assertion that "[t]his convoluted and devious means of retaliating against a union member for exercising his right within the union is not the conduct at issue in . . . most Title I cases." Pet. Br. at 29. Suffice it to say that, as noted in text, Congress had a very different view as to the importance of this category of cases.

195 NLRB 1 (1972); *Machinists Lodge No. 707*, 276 NLRB No. 105 (1985); writing the Labor Department alleging union election improprieties, *Buffalo Newspaper Guild*, 220 NLRB 79 (1975); calling an ad hoc membership meeting to debate union policies, *Operating Engineers Local 400*, 255 NLRB 596 (1976); or publishing a newsletter critical of the union leadership, *Operating Engineers Local 139*, 273 NLRB 982 (1984), *enf. denied*, 796 F.2d 986 (7th Cir. 1986). Generally, the Labor Board has reasoned in these cases as follows: (1) that the conduct for which the union member was disciplined (involvement in the internal affairs of the bargaining representative) is protected conduct under § 7; (2) that the discipline restrained or coerced the member in the exercise of that protected activity; and (3) that disciplining the union member for such conduct "invaded" the policies of the labor laws in general and the LMRDA in particular. By that same reasoning, all Title I claims alleging retaliation based on "dissident" activities could be brought as § 8(b)(1)(A) charges as well.

Thus, in spite of petitioner's and his supporting *amici curiae's* insistence that this class of cases does not exist,[7]

[7] The only mention of this entire line of authority in any of the submissions urging reveral is a brief statement in a footnote in the AUD's brief. AUD Br. at 20 n.7. Citing one of the leading cases, *Carpenters Local No. 22, supra*, AUD implies that the NLRB has rejected that case's holding and rationale in a subsequent case, *East Texas Motor Freight*, 262 NLRB 868, 870 (1982).

In fact, *East Texas Motor Freight* has *never* been interpreted by the NLRB as limiting *Carpenters Local No. 22* or its progeny, the language from *East Texas Motor Freight* quoted by AUD has never been quoted or relied on by the NLRB, and in cases subsequent to *East Texas Motor Freight* the Board has continued to adhere to the logic of *Carpenters Local No. 22* and the line of authority discussed in text. *See, e.g., Machinists Lodge No. 707*, 276 NLRB No. 105 (1985).

Marine Workers and *Scofield* it must be noted are entirely ignored by Petitioner and his supporting *amici curiae*.

the decisional law shows that there is an overlap between the LMRDA and the NLRA that is more than "substantial." [8]

c. Petitioner and his supporting *amici curiae* offer virtually nothing to counter the foregoing showing of LMRDA Title I's genesis in the national labor policy and the Title's

[8] The NLRB doctrine set forth in text has been explicitly embraced by one federal appellate court. *See Helton v. NLRB*, 656 F.2d 883 (D.C. Cir. 1981). But in *NLRB v. Operating Engineers Local 139*, 796 F.2d 985, 990 (7th Cir. 1986), the United States Court of Appeals for the Seventh Circuit disagreed and ruled that "[a]lthough any disciplinary charge or fine is 'coercive' to some degree, the provisions of § 8(b)(1)(A) were not intended by Congress to apply to the imposition by the union of fines not affecting the employer-employee relationship."

As the Seventh Circuit noted, its decision in *Operating Engineers Local 139* follows logically from this Court's decision in *Allis-Chalmers* in which the Court ruled that disciplining union members for crossing a picket line does not "restrain or coerce" the members in the exercise of their § 7 right to refrain from engaging in concerted activities, for *Allis-Chalmers* is best understood as resting on the theory that "since membership in the union is purely voluntary, it is not unlawful for a union to punish a member by fine, suspension or expulsion for an infraction of the union rules." 796 F.2d at 990. And as the Seventh Circuit also noted, this theory of *Allis-Chalmers* has been reinforced by this Court's more recent decision in *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), which holds that union members have a right to resign from their union at any time even where union rules prohibit such resignation. *But see id.* at 109 n.20 (noting *Marine Workers* doctrine).

Given the tension between *Marine Workers* on the one hand and *Allis-Chalmers* and *Pattern Makers'* on the other, this Court may on an appropriate occasion wish to reconsider the continuing vitality of *Marine Workers* and/or of the NLRB and lower court rulings *Marine Workers* has spawned. But for present purposes what is determinative is that—whatever the ultimate fate of *Marine Workers* and its progeny—there can be no doubt that under the current state of the law, the overlap between LMRDA Title I and NLRA § 8(b)(1)(A) is near total. *Cf. DelCostello*, 462 U.S. at 170 (declining to pass upon, but treating as instructive, NLRB position with respeca to overlap between § 8(b)(1)(A) and the duty of fair representation).

close resemblance to, and overlap with, the duty of fair representation and NLRA union unfair labor practice provisions.[9] Yet they insist that no such resemblance or overlap exists and they assert that "the proper sibling[s]" of Title I are such federal civil rights statutes as 42 U.S.C. §§ 1981 & 1983. Pet. Br. at 31. *See also* AUD Br. at 12-15; U.S. Br. at 13.

Two points need to be made. First, all the evidence thus far cited in this brief on the issues of resemblance and overlap—*viz.*, the statutory language, the legislative materials, the discussions of this Court in *Allis-Chalmers* and *Emporium Capwell*, the *Marine Workers* doctrine and the myriad NLRB and lower court decisions applying that doctrine—is ignored in the briefs urging reversal. The very existence of this evidence is not acknowledged. Second, the counter "evidence" raised is plainly not of comparable weight. Principally, petitioner and his supporting *amici curiae* raise arguments in favor of the

[9] We would be derelict if we did not note that Petitioner and *amici curiae* AUD do argue that the 1959 Congress specifically intended to authorize a limitations period of at least 18 months. Pet. Br. at 39; AUD Br. at 18. The only provision they point to, however, offers them absolutely no support.

Title III of the LMRDA regulates the use of trusteeships by international unions to manage the affairs of local unions. Although actions can be brought to challenge trusteeships, the law adopts a strong presumption as to their validity for the first 18 months. 29 U.S.C. § 464(c). Petitioner and AUD thus argue that, at least in Title III, the Congress that passed the LMRDA must have presumed at least an 18 month limitation.

This simply doesn't follow, since a Title III suit is not necessarily about the *creation* of the trusteeship, but about the validity of its *maintenance*. See 24 U.S.C. § 464 (authorizing actions to challenge trusteeships that are "not established *or maintained* in good faith") (emphasis added). There is no evidence that the 18-month preemption has any intention other than to minimize government interference in the trusteeship decisions of a union, until there is reason to suspect wrongdoing. *See Pruitt v. Carpenters*, 128 LRRM 2465 (N.D. Ga. 1987).

civil rights analogy at such a high level of abstraction as to be content free.

Thus, it is urged on the other side that the LMRDA is a "civil rights" statute because its focus is on such participatory and political rights as free speech and assembly which have their roots in the Constitution; numerous quotes from the legislative debates, where LMRDA rights are referred to as "fundamental," or "inherent" constitutional rights are cited in support of this suggestion. In contrast, the NLRA is asserted to protect "economic" rights. *See, e.g.*, Pet. Br. at 31-32, 35; U.S. Br. at 13; AUD Br. at 4, 12-15.

This "distinction" does not distinguish anything at issue. Even if the myriad evidence of Congress' belief that the LMRDA is working within the same legislative scheme and policies as the NLRA is to be ignored, *see* pp. 11-15, *supra*, petitioner and his *amici curiae* never explain why guaranteeing free speech in a union hall is a "civil rights guaranty," while guaranteeing free speech in a union organizing context is not. *Compare* 29 U.S.C. § 411(a)(1) *with* 29 U.S.C. § 157; or why the worker's interest in participating in the union's internal debate over collective bargaining goals is a "vital non-economic interest" in "participation," *see* Pet. Br. at 35, while a worker's interest in deliberations on whether or not to unionize is something different. The various quotations regarding the "civil rights" content of he LMRDA generally is equally meaningless in distinguishing the LMRDA from the NLRA. The rhetoric of the LMRDA debates and the relevant reviewing court opinions are no more "civil rights" oriented than the rhetoric of those who passed or reviewed the Wagner Act. *See, e.g., Thomas v. Collins*, 323 U.S. 516, 533-534 (1944) (comparing § 7 rights to First Amendment); *NLRB v. Jones & Laughlin*, 301 U.S. 1, 33 (1937) (§ 7 "is a fundamental right" whose suppression "is a proper subject for condemnation by competent legislative authority"). *See also* 93 Cong. Rec.

4023 (1947), reprinted in II Legislative History of the Labor-Management Relations Act of 1947, at 1032 (Sen. Taft) (§ 8(b)(1)(A) designed to protect workers' "rights as American citizens").

3. *The Appropriateness of "Borrowing" the § 10(b) Limitations Period for LMRDA Title I Cases.* a. The policy and practical considerations component of the *Del-Costello* test, like the family resemblance and overlapping coverage component, clearly support the appropriateness of "borrowing" § 10(b) in LMRDA Title I cases.

First, the substantial overlap of Title I coverage and the coverage of other actions governed by § 10(b), *see supra* pp. 17-22, would mean that—if Title I had a longer limitations period—many, possibly most, Title I plaintiffs could prosecute stale § 8(b) or duty of fair representation claims under Title I. There is simply no evidence of a congressional determination to give complainants who chose Title I litigation such a preference. And, of course, such a preference would undermine the established policies favoring repose as to these other actions.

Second, as we have shown, the Congress that passed the LMRDA viewed the statute as a means of perfecting the federal scheme of collective bargining. Given the well-established federal labor policy of favoring the relatively "rapid disposition of labor disputes," *United Parcel Service v. Mitchell*, 451 U.S. 56, 63 (1981), there is every reason to believe that Congress intended the Title I limitations period to faithfully reflect that policy.[10]

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[10] This is bolstered by the fact that elsewhere in the LMRDA, Congress provided an even shorter limitations period than that provided by NLRA § 10(b), *see* 29 U.S.C. §§ 482 & 483 (authorizing suits by the Secretary of Labor to overturn regularly scheduled officer elections; member has one month from election to file challenge with Secretary; Secretary then has two months to file suit). In certain contexts, officer election suits also can arise under Title I. *E.g., Brotherhood of Loc. Eng. v. Sytsma*, 802 F.2d 180 (6th Cir. 1986) (international president's recall election).

Third, the NLRA § 10(b) period is plainly sufficient to provide a plaintiff a fair opportunity to litigate his claims. The *DelCostello* decision to subject duty of fair representation plaintiffs to § 10(b), and the fact that bringing a LMRDA claim involves no more effort than bringing a fair representation claim conclusively demonstrate that the six-months period accords meaningful access to the courts.[11]

b. Petitioner and his supporting *amici curiae* respond that the federal policy of § 10(b), promoting rapid disposition of labor disputes, has no application to "internal" union disputes such as Title I involves. Thus petitioner argues that § 10(b)'s policy of repose should apply only to cases involving "the formations of the collective agreement and the private settlement of disputes under it." Pet. Br. at 43 quoting *DelCostello*, 462 U.S. at 163.[12]

Section 10(b), first of all, represents Congress' judgment on the proper policy of repose for *all* unfair labor practice cases, regardless of their apparent effect on extant "bargaining relationships," or "agreements." The statute governs charges regarding all the myriad forms of employer or union misconduct delineated in the NLRA, whether in the organized or unorganized contexts. The repose policy embodied in § 10(b) must therefore be substantially broader than that stated by petitioner and his

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[11] To be sure, petitioner and his supporting *amici curiae* AUD argue the unfairness of the § 10(b) period; arguments, however, that would equally lead to the conclusion that *DelCostello* was working unfairness. Pet. Br. at 49-51; AUD Br. at 21-22.

[12] The United States argues that a case should have to implicate "the national interests in stable bargaining relationships and finality of private settlements." U.S. Br. at 14, quoting 462 U.S. at 170-171. Finally, AUD argues that § 10(b) "should apply only to suits which "inevitably involve an immediate and direct impact on labor management relations." AUD Br. at 11, quoting *Monarch Long Beach Corp. v. Teamsters Local 812*, 762 F.2d 228, 231 (2d Cir. 1985).

supporting *amici curiae* and their reformulations of that policy must be unfaithful to what Congress intended.[13]

At its core, moreover, petitioner's argument rests on the notion that intra-union disputes do not affect labor-management relations and industrial stability. That notion is in direct conflict with the legislative findings on which the LMRDA is premised. Congress explicitly found that the sorts of internal controversies present in Title I suits do have the potential for disrupting labor management relations, much as do traditional unfair labor practices governed by § 10(b). *Compare* 29 U.S.C. § 401 with 29 U.S.C. § 151.

And looking at the matter objectively, the petitioner's position misperceives the realities of how the industrial relations system functions. The disputes in Title I cases are not "internal" in the sense that those disputes are distant from employer-union controversies. Rather, Title I governs the very processes whereby a labor organiza-

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[13] The effort to carve up labor law causes of action according to a subjective theory of the closeness of the fit to collective bargaining is, moreover, in conflict with this Court's jurisprudence under § 301 of the LMRA, 29 U.S.C. § 186. *See Plumbers Local 334 v. Plumbers*, 452 U.S. 615 (1981). In that case, this Court held that § 301 governs suits between labor unions based on union constitutions, rejecting a position with respect to § 301 almost indistinguishable from that now urged regarding § 10(b). Although such suits were within the plain meaning of § 301, and there was no evidence of any congressional desire to exclude some or all intra-union disputes, a number of lower federal courts adopted the view that the potential import of such disputes for labor relations and industrial stability must be independently assessed. This Court rejected that construct, noting that "surely Congress could conclude that the enforcement of the terms of union constitutions . . . would contribute to the achievement of labor stability." 452 U.S. at 624. Here, petitioner and his *amici curiae* seek to revive the same (and now discredited) view. Indeed, AUD cites *Alexander v. Operating Eng.*, 624 F.2d 1235 (5th Cir. 1980), a pre-*Plumbers* § 301 decision as authority, and then admits that *Alexander* did not survive the *Plumbers* decision. AUD Br. at 17-18.

tion formulates its positions in these controversies. The Title I disputes may, for example, involve the identity of the union officers who deal with the employer, the freedom of those officers to enter contracts, or the positions taken by the representative on any issue.

Excessive instability in that process will make labor-management agreement more difficult, and, indeed, may lead to pressures to reopen isues long-settled or circumvent earlier understandings. Congress was aware that the litigation authorized in the LMRDA, by potentially unsettling the internal governance structures of the bargaining representatives, could produce instability in collective bargaining relationships. The Senate Report thus cautioned that "in . . . enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective bargaining agents." S. Rep. No. 187, *supra*, at 7.[14]

What unites most cases governed by § 10(b) then is *not* that the case grows out of events involving the negotiation or administration of collective agreements but that the cases concern a dispute between the various participant groups in our labor relations system who have continuing—and not always entirely consensual—relationships, and that the nature and stability of those continuing relationships are the subject of that system's public concerns. *Cf. Pattern Makers v. NLRB*, 473 U.S. 95, 13 n.25 ("Membership in a union contemplates a continuing relationship . . . a special relationship . . . as far removed from the main channel of contract law as the relationship

[14] We do not contend, of course, that all Title I cases would involve issues with potentially serious consequences to the collective bargaining process. But, neither do all duty of fair representation claims implicate the concerns for industrial stability expressed in *DelCostello*. No such uniformity is needed. *See United Parcel Service v. Mitchell*, 462 U.S. at 169 ("Although the present case involves a fairly mundane and discrete wrongful-discharge complaint, the grievance and arbitration procedure often processes disputes involving interpretation of critical terms.")

created by marriage . . ."); *John Wiley & Sons v. Livingston*, 376 U.S. 543, 550 (1964) ("Central to the peculiar status and function of a collective bargaining agreement is the fact . . . that it is not in any real sense simply the product of a consensual relationship.")

The relationship of union members to their union is one of the basic continuing relationships upon which the labor relations scheme is built, and the LMRDA represents a Congressional determination that the proper functioning of the collective bargaining system depends in part on the nature of the continuing union-member relationship. The continued public interest in the nature of that relationship and the harm that can be done by allowing stale claims to linger are powerful reasons for the appropriateness of borrowing § 10(b).

State law tort limitation periods, in contrast, involve no considerations of early repose, because they are designed with no expectation of regulating such specialized continuing relationships. That is a powerful reason for *not* "borrowing" those limitation periods.

Section 10(b) should thus be borrowed for use in Title I actions.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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